

Stream and Lake Alteration Program

State of California
Resources Agency
Department of Fish and Game
South Coast Region

Introduction

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- The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, and native plants, and the habitats necessary for biologically sustainable populations of those species.

Overview

- Review Jurisdictional Streams and Lakes v. State Wetlands
- Review Section 1600 et seq. of the Fish and Game Code
- Issuance of an Agreement & CEQA
- Program up-dates

Jurisdictional Stream or Lake v. State Wetlands

- Title 14 Definition of Stream
- Title 14 Definition of Lake
- Title 14 Designation Waters of Department Interest
- Department Guidance to 1600 Staff on Interpreting Stream Features
- Fish and Game Commission's Definition of Wetlands

Title 14 Definitions of a Stream and Lake

- Section 1.72 – “A stream is a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.”
- Section 1.56 – “Includes natural lakes or man made reservoirs.”

Title 14 Designation Waters of Dept. Interest

- Section 720 – “For the purpose of implementing Sections 1601 and 1603 of the Fish and Game Code which requires submission to the Department of general plans sufficient to indicate the nature of a any project which will use material from the streambeds or will divert, obstruct or change the natural flow or bed of any river, stream or lake **designated** by the Department, **all rivers, streams, lakes, and streambeds in the State of California, including all rivers, streams, and streambeds which may have intermittent flows of water, are hereby designated for such purposes.**”

Department's Guidance to 1600 Staff on Interpreting Stream Features (1994 Field Guide)

- The term stream can include intermittent and ephemeral streams, rivers, creek, dry washes, sloughs, and watercourses with subsurface flows. Canals, aqueducts, irrigation ditches, and other means of water conveyance can also be considered streams if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife.

Department's Guidance to 1600 Staff (Cont.)

- Biological components of a stream may include aquatic and riparian vegetation, all aquatic animals including fish, amphibians, reptiles, invertebrates, and terrestrial species which derive benefits from the stream system.
- As a physical system, a stream not only includes water (at least on an intermittent or ephemeral basis), but also a bed or channel, a bank and/or levee, instream features such as logs or snags, and various flood plains depending on the return frequency of the flood event being considered (i.e., 10, 50, or 100 years, etc.).

Department's Guidance to 1600 Staff (Cont.)

- The lateral extent of a stream can be measured in several ways depending on a particular situation and the type of fish or wildlife resource at risk. Any of the following criteria could be applicable in determining what constitutes a stream depending on the potential for the proposed activity to adversely affect fish and other stream-dependent wildlife resources. The following criteria are presented in order from the most inclusive to the least inclusive:

Department's Guidance to 1600 Staff (Cont.)

- A. The flood plain of a stream can be the broadest measurement of a stream's lateral extent depending on the return frequency of the flood event used. For most flood control purposes, the 100-year flood event is the standard measurement, and maps of the 100-year flood plain exist for many streams. However, the 100-year flood plain may include significant amounts of upland or urban habitat, and therefore may not be appropriate in many cases.

Department's Guidance to 1600 Staff (Cont.)

- B. The outer edge of riparian vegetation is generally used as the line of demarcation between riparian and upland habitats, and is therefore a reasonable and identifiable boundary for the lateral extent of a stream. In most cases, the use of this criterion, together with an adequately wide biological buffer should result in protecting the fish and wildlife resources at risk.

Department's Guidance to 1600 Staff (Cont.)

- C. Most streams have natural banks, which confine the flows to the bed or channel except during flooding. In some instances, particularly on smaller streams or dry washes with little or no riparian habitat, the banks should be used to mark lateral extent of a stream.
- D. A levee or other artificial stream bank could also be used to mark the lateral extent of a stream. However, in many instances, there can be extensive areas of valuable riparian habitat located behind the levee.

Fish and Game Commission's Definition of Wetlands

- The Commission found that the U.S. Fish and Wildlife Service's definition and classification to be the most biologically valid of those definitions and classification systems presently utilized in California.
- "Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water."

Fish and Game Commission's Definition of Wetlands (Cont.)

- For the purpose of this classification system, wetlands must have one or more of the following three attributes:
 - (1) at least periodically, the land supports predominately hydrophytes;
 - (2) the substrate is predominantly undrained hydric soil; and
 - (3) the substrate is non-soil and is saturated with waters or covered by shallow water at some time during the growing season of each year.”

The Differences

- Section 1600 et seq. of the Fish and Game Code applies to:
 - ◆ Streams
 - ★ perennial, intermittent, or ephemeral streams (includes rivers, streams, creeks, sloughs, desert washes)
 - ★ from which fish or wildlife derive benefit
 - ★ whether vegetated or unvegetated
 - ★ to top of bank, if no riparian vegetation is present,
 - ★ otherwise, typically from edge of the riparian vegetation
 - ◆ Artificial drainages— if they provide fish and wildlife habitat

The Differences (Cont.)

- ◆ Lakes and Ponds – natural or artificial; size and functions are considered. To date, vernal pools have not been subject to the notification requirement.
- State wetlands would apply to lands that have one of the three criteria, predominately hydrophytes, hydric soil, and presence of hydrology (include vernal pools, seeps, tidal sloughs, and other isolated wetlands).
- A feature that is subject to 1600 et seq. is in most cases a State defined wetland, a State defined wetland is not always jurisdictional pursuant to the 1600 et seq. Code.

Section 1600 et seq., F&G Code

- Sections 1600 through 1607 regulates projects and activities in and around lakes and streams for the purpose of protecting fish and wildlife resources from adverse affects.
- Section 1600 Of the Code contains the following **recital**:
 - ◆ **The** protection and conservation of the fish and wildlife resources of this state are hereby declared to be of utmost public interest.
 - ◆ Fish and wildlife are the property of the people and provide a major contribution to the economy of the state as well as providing a significant part of the people's food supply and therefore their conservation is a proper responsibility of the state.

Sections 1601 & 1603, F&G Code

◆ Operators (Applicants)

- ★ Section 1601—Public agencies (state, local, special purpose governmental entities) and public utilities.
- ★ Section 1603 -- Individuals, companies, and organizations that are not public agencies.

Regulated Activities

- Section 1601—Public agencies (state and local), and public utilities must notify the Department and obtain a lake or streambed alteration agreement if a project or activity will:
 - (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit,

Regulated Activities (Cont.)

Section 1601 (Cont.)

- (2) use material from the streambeds designated by the department, or
- (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the department.

Regulated Activities (Cont.)

- **1603 –Diversion or Obstruction of Waters:** It is unlawful for any persons (individuals, companies, and organizations)
 - (1) to substantially divert or obstruct the natural flow, or
 - (2) substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or

Regulated Activities (Cont.)

- **1603 –Diversion or Obstruction of Waters: (Cont.)**

(3) use any material from the streambeds, without first notifying the department of that activity, except when the department has been notified pursuant to Section 1601.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements

- **Agreement issued pursuant to 1601**
 - ◆ Department acts as a Responsible Agency, and utilize the analysis produced by the lead agency.
 - ◆ The Department files a Notice of Determinations (NOD) with the State Clearinghouse (SCH), produces findings as required of Responsible Agencies, and executes the Agreement.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

- Agreement issued pursuant to 1601 (Cont.)
 - ◆ If no lead agency document, the Department will make its own determination on whether to produce a CEQA document or use a Categorical Exemption, and file a Notice of Exemption (NOE).
 - ◆ The Department executes Agreement is after CEQA compliance.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

- Agreement issued pursuant to 1603
 - ◆ Department typically acts as a Responsible Agency, if a local agency produces a CEQA document, and the same process described relative to CEQA and Section 1601 applies.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

◆ Department as Lead Agency

- ★ However, if there is no lead agency document the Department will assume Lead Agency role.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

- ◆ Department as Lead Agency (Cont.)
- ◆ The Department will file a Notice of Exemption, if the project meets the criteria of a Categorical Exemption, or that of a Statutory Exemption.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

- ◆ **Department as Lead Agency (Cont.)**
- ◆ When no exemptions are applicable, the Department will prepare the appropriate CEQA document.
- ◆ Typically a draft Streambed Alteration Agreement is circulated with the document.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

- ◆ **Department as Lead Agency (Cont.)**
- ◆ At the completion of public review period, the project's mitigation measures are incorporated in the Agreement, and a NOD is filed with the SCH.
- ◆ The Department only signs the Agreement after it has complied with CEQA.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

- **Department as Lead Agency (Cont.)**
- The applicant/operator will financially compensate the Department for all expenses incurred in processing the CEQA document. Therefore, the Department's CEQA filing fees pursuant to Section 711.4 of the Fish and Game Code is not required.

CEQA and 1601/1603 Lake or Streambed Alteration Agreements (Cont.)

- **Department as Lead Agency (Cont.)**
- To speed up the process, the applicant/operator is allowed to contract directly for an environmental consultant to prepare the necessary CEQA documents and studies.
- However, the CEQA document is the Department's. Therefore, the information and the presentation of the information, is directed by the Department 1600 staff.

Program Up-dates:

- Compliance program
 - ◆ Warden Staff will be inspecting construction sites to confirm that conditions in the Agreements are being followed.

Program Up-dates:

- Master (Program) Streambed Alteration Agreement
 - ◆ Program Agreements are being prepared on a watershed scale in Orange County and western Riverside County, in association with the Corps' Special Area Management Plans (SAMP).

Streambed Alteration Program:

- www.dfg.ca.gov/1600 .
- 858-636-3160 (General Information)
- 858-467-4223 Tamara Spear, NW San Diego County
- 858-467-4207 Christine Fritz Remainder of San Diego County
- 858-467-4276 Don Chadwick, Supervisor
- 858-637-5510 Donna Cobb, S. Los Angeles Co. & San Diego Crk & Aliso Crk Watershed
- 562-493-6897 Laura Crum, Remainder of Orange County